

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Universal Service Reform - Mobility Fund |) | WT Docket No. 10-208 |
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To: The Commission

COMMENTS OF COBANK, ACB

CoBank, ACB (“CoBank”) hereby submits these comments in response to the Public Notice seeking further comment on how to structure the Phase II Mobility Fund.¹ CoBank urges the Commission to modify proposed rule section 54.1017 to make clear that Mobility Fund Phase II participants may provide Commitment Letters and Letters of Credit (“LOCs”) from banks that are insured by the Federal Deposit Insurance Corporation (“FDIC”) or banks that are part of the Farm Credit System (the “System”) and insured by the Farm Credit System Insurance Corporation (“FCSIC”). Alternatively, the Wireline Competition Bureau and the Wireless Telecommunications Bureau (together, the “Bureaus”) should issue an Order *well before the auction* waiving proposed section 54.1017 to permit Mobility Fund Phase II participants to obtain Commitment Letters and LOCs from CoBank, so that auction participants are not disadvantaged by a rule that, as proposed, would prohibit them from using one of the largest lenders to the rural communications industry.

¹ *Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90; WT Docket No. 10-208, Public Notice, DA 12-1853 (rel. Nov. 27, 2012) (“Public Notice”).

I. COBANK IS A LARGE, WELL ESTABLISHED, INSURED AND FINANCIALLY STRONG BANK SERVING RURAL AMERICA

CoBank's mission is to serve rural America. CoBank is a U.S. bank authorized under Section 3.7 of the Farm Credit Act of 1971 to "make loans and commitments" and to extend "other technical and financial assistance at any time."² CoBank is one of the four Banks of the System that was established by the Farm Credit Act to meet the lending needs of agribusiness in rural America. As such, CoBank is regulated by the Farm Credit Administration, an independent federal agency. CoBank provides loans, leases, letters of credit and other financial services to vital industries across rural America. The System is a unique federally chartered network of borrower-owned lending institutions composed of cooperatives and related service organizations that are exclusively dedicated to serving as a critical source of debt capital to rural America and the vital industries that support rural America, including the rural communications industry.

CoBank's customers consist of rural communications, energy, and water companies; agricultural cooperatives; farmer-owned financial institutions, including Agricultural Credit Associations and Federal Land Credit Associations (together, the "Associations");³ and other businesses that serve rural America.

CoBank is an experienced and sophisticated banker to the communications sector. CoBank has more than \$3.3 billion in loan commitments to more than 200 rural communication companies nationwide. These commitments by sector are comprised of wireline (73%), cable television (15%) and wireless (12%). In addition, CoBank has syndicated \$2.7 billion in communication loans to the Farm Credit System and commercial banks. CoBank is the lead

² 12 U.S.C. § 2128(a).

³ CoBank is chartered by the Farm Credit Administration to serve the Associations that provide credit and financially related services to or for the benefit of eligible borrowers/shareholders for qualified purposes in specific geographic areas in the United States.

administrative agent for many key syndicated communications facilities, including financings for Atlantic Tele-Networks, Inc., Frontier Communications, and Northeast Communications of Wisconsin, Inc. Participants in these CoBank-led deals have included other System institutions as well as commercial institutions such as Goldman Sachs, Wells Fargo, and Deutsche Bank.

CoBank also has extensive experience issuing LOCs; as of December 18, 2012 it currently has over \$1.2 billion of LOCs outstanding. As with any large bank, LOCs are an important product that CoBank provides to its business customers in the normal course of its banking business. CoBank issues LOCs each day and has over 30 years of experience in issuing standby LOCs. As additional evidence of CoBank's experience with LOCs and its broad acceptance in the marketplace as an issuer, CoBank is an approved issuing bank of LOCs for the United States Department of Agriculture's Commodity Credit Corporation ("CCC") and for the National Association of Insurance Commissioners.

CoBank provides a broad range of loans and other financial services to vital industries in all 50 states through three operating segments: Agribusiness, Strategic Relationships and Rural Infrastructure. CoBank's Rural Infrastructure operating segment includes loans and other financial services provided to companies in the communications, power, and water industries. Customers include rural electric generation and transmission cooperatives, electric distribution cooperatives, renewable energy providers, independent power producers, investor-owned utilities, rural local exchange carriers, wireless providers, data transport networks, cable television systems, data centers, and rural water and waste water companies. As of September 30, 2012, Rural Infrastructure commitments totaled \$20.2 billion. CoBank is one of the strongest and safest banks in the United States and the world. CoBank's total assets as of September 30,

2012 were \$90.1 billion.⁴ Based upon the Federal Financial Institutions Examination Council's list of the Top 50 Bank Holding Companies as of September 30, 2012,⁵ CoBank's total assets would put CoBank at position number 28. As of September 30, 2012, CoBank's permanent capital, total surplus, core surplus and net collateral ratios exceeded the regulatory minimums.⁶ As the Bureaus recently concluded, CoBank's assets make it comparable to banks in the top 50 based on total assets."⁷

CoBank also is highly rated and, and the Bureaus already have observed, exceeds the rating requirements set forth in the Commission's proposed rule.⁸ CoBank has been rated AA-/Stable by Standard & Poor's. In addition, CoBank and the Federal Farm Credit Banks have been rated by Fitch Ratings, a nationally recognized rating agency. As of September 11, 2012, Fitch rated the Federal Farm Credit Banks' senior unsecured bonds at "AAA"⁹ and senior unsecured notes at "AAA." With respect to CoBank specifically, Fitch rated CoBank's long-term Issuer Default Rating ("IDR") at "AA-"¹⁰ and its short-term IDR at "F1+""¹¹ and its

⁴ CoBank September 30, 2012 Quarterly Report, *available at* <http://www.cobank.com/Newsroom-Financials/Financial-Reports.aspx>, at p. 3.

⁵ *Available at* <http://www.ffiec.gov/nicpubweb/nicweb/Top50Form.aspx>. This list includes only bank holding companies. While CoBank is not a bank holding company and thus not included in the list, the Bureaus cited this list, and agreed that CoBank's total assets as of June 30, 2012 (which exceeded \$90 billion) "would put CoBank at position number 28 if it were a bank holding company." *See, Mobility Fund Phase I; Waiver of Section 54.1007(a)(1) of the Commission's Rules*, WC Docket No. 10-90; WT Docket No. 10-208; AU Docket No. 12-25, Order, DA 12-1747 (WCB WTB rel. Nov. 1, 2012) n.26 ("*Waiver Order*").

⁶ CoBank September 30, 2012 Quarterly Report, p. 11.

⁷ *Waiver Order*, ¶ 9.

⁸ *Id.*

⁹ Highest credit quality.

¹⁰ Very high credit quality.

subordinated debt at “A+.”¹² CoBank was recently named one of the 50 safest banks in the world, for the second year in a row, by Global Finance Magazine.¹³ The ranking was based on a methodology that included total assets and an evaluation of long-term ratings from major credit agencies. CoBank was one of only five U.S. banks to be included on that list. In sum, CoBank is a well-established U.S. Bank that satisfies or exceeds the asset/size and ratings requirements in the Commission’s proposed rules, and is one of the largest lenders to rural communications service providers.

II. THE COMMISSION SHOULD MODIFY PROPOSED RULE SECTION 54.1017 TO ALLOW COBANK TO PROVIDE COMMITMENT LETTERS AND LOCS FOR MOBILITY FUND PHASE II PARTICIPANTS

As proposed, section 54.1017 of the rules would require that Commitment Letters and LOCs submitted by Mobility Fund Phase II participants be issued by a bank “acceptable to the Commission,” defined as (1) among the 50 largest U.S. banks; (2) whose deposits are insured by the FDIC; and (3) with a long-term unsecured credit rating from Standard & Poor’s of A- or better, or an equivalent rating from a nationally recognized credit agency.

As discussed above, CoBank meets two of these three criteria, and the third is not applicable since CoBank is not a deposit-taking institution. Specifically, it is among the 50

¹¹ Best quality grade, indicating exceptionally strong capacity of obligor to meet its financial commitment.

¹² High credit quality.

¹³ Available at <http://www.gfmag.com/tools/best-banks/11661-worlds-50-safest-banks-april-2012.html#axzz284XiEq7q>; see also, News Release, “CoBank Named to ‘World’s 50 Safest Banks’ List By Global Finance Magazine,” Aug. 21, 2012, available at http://www.cobank.com/~media/Files/Searchable%20PDF%20Files/Newsroom%20Financials/News%20Releases/News%20Releases%202012/Global%20Finance%20%20safest%20banks%20list_v2.pdf.

largest banks and it has a credit rating of AA-/Stable from Standard & Poor's.¹⁴ However, CoBank does not have any deposits to be insured by the FDIC. Following the Mobility Fund Phase I auction, the Bureaus issued a blanket waiver, *sua sponte*, allowing auction winners to provide LOCs issued by CoBank.¹⁵ Based upon the fact that CoBank “is insured through the [FCSIC], which was modeled after the FDIC,”¹⁶ and the Bureaus conclusion that “FCSIC insurance provides protections equivalent to those indicated by holding FDIC-insured deposits,” and the Bureaus found that allowing CoBank to provide LOCs “would not compromise the policy underlying” the rule.¹⁷

In light of those findings, the Commission should revise the definition of an “acceptable bank” in proposed rule 54.1017 to treat banks as “acceptable” if they are insured by the FDIC *or* FCSIC.

III. ALTERNATIVELY, THE BUREAUS SHOULD ISSUE ANOTHER BLANKET WAIVER

In the event that the Commission does not modify proposed section 54.1017 as discussed above, the Bureaus should issue another blanket waiver allowing Mobility Fund Phase II participants to provide Commitment Letters and LOCs from CoBank. All of the reasons that the Bureaus found in support of the blanket waiver in the Phase I auction apply with equal force to Phase II.

¹⁴ *See supra* Section I.

¹⁵ *See, Waiver Order.*

¹⁶ *Id.*, ¶ 9.

¹⁷ *Id.* at ¶ 9.

IV. ANY ACTION THE COMMISSION TAKES SHOULD BE WELL IN ADVANCE OF THE AUCTION

Whether the Commission opts to revise the definition of an “acceptable bank” in its rules, or issue a blanket waiver, that action should come well in advance of the auction so that CoBank borrowers can plan their preparation for Phase II secure in the knowledge that they can use CoBank for their Commitment Letters and LOCs. This will facilitate CoBank borrowers’ participation in the auction, and avoid uneconomic decisions by participants to seek other banks to provide LOCs that CoBank easily could offer.

CONCLUSION

CoBank urges the Commission to modify the proposed Mobility Fund Phase II rule defining an “acceptable bank” as discussed herein, or to issue another blanket waiver allowing participants to use CoBank. In either case, it should take action well in advance of the Mobility Fund Phase II auction in order to ensure CoBank borrowers know that they will be able to use CoBank for their Commitment Letters and LOCs.

Respectfully submitted,

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December 20, 2012